

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No.

STANLEY W. TAYLOR,

Petitioner,

vs.

PRENTISS M. BROWN, Price Administrator,

Respondent.

BRIEF IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI.

The opinion of the United States Emergency Court of Appeals in this cause is reported in Pike and Fischer, OPA SERVICE, Volume 9, p. 612:9, and is included in the transcript of record in said Court (pp. 164-173).

I.

**STATEMENT OF GROUNDS ON WHICH THE JURISDICTION
OF THIS COURT IS INVOKED.**

The judgment of the United States Emergency Court of Appeals was dated July 15, 1943. (Tr. 174.) The final order in said Court denying rehearing in said cause was dated July 30, 1943. (Tr. 183.)

The petition for a writ of certiorari is filed in the Supreme Court of the United States in this cause pursuant to the procedure specifically provided in Sections 203, 204 and 204(d) of the Emergency Price Control Act of 1942 (Act Jan. 30, 1942, C. 26, 56 Stat. 23). It is therefore a justiciable cause properly before the Supreme Court of the United States for judicial review, the petitioner having raised his objections to the constitutionality of the said Act and of the Price Administrator's regulations thereunder at the earliest opportunity. *Carter v. Texas*, 177 U. S. 442, 20 Sup. Ct. 687.

Section 204(d) of the Emergency Price Control Act of 1942 specifically precludes all Federal, State and Territorial Courts, except the Emergency Court of Appeals and the Supreme Court of the United States from having or exercising any "jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision."

II.**STATEMENT OF THE CASE.**

The statement of the case hereinbefore set forth in the petition for writ of certiorari (p. 2), including the statements of facts included under *Reasons Relied on for Allowance of Writ* (p. 9), is hereby referred to and adopted as the statement of the case herein as if the same were here fully set forth. Reference is also made to pages 5 to 27 of the transcript of record in the Emergency Court of Appeals.

Important constitutional questions are involved in this legislation, and should be passed upon by this Honorable Court.

III.**ERRORS OF COURT BELOW.**

The United States Emergency Court of Appeals erred in holding that the Act of January 30, 1942, Ch. 26, 56 Stat. 23, is within the proper exercise of the "war powers" conferred upon Congress in the Constitution (Tr. 166) and that it and the Administrator's regulations promulgated thereunder were not in violation of the Fifth Amendment to the Constitution and the other constitutional safeguards of the right of private property and contracts. (Tr. 169.)

IV.

**DUE PROCESS CLAUSE OF FIFTH AMENDMENT
VIOLATED.**

Exercise by the Congress of particular "war powers" does not permit it to disregard the Fifth Amendment. In exercising such "war powers", the Congress must respect the Fifth Amendment with the same scrupulous regard as in times of peace.

Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398;

Schechter v. U. S., 295 U. S. 495.

"The Constitution of the United States is a law for rulers and people equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

Ex parte Milligan, 4 Wall. 2, 18 L. Ed. 281.

Under the regulations promulgated by the Price Administrator under the Act in question, an owner of rental property is given an opportunity for an administrative hearing *after* the taking of his property, but not *before*. Cases holding that "due process" under the Fifth Amendment require notice and hearing *before*, not *after*, contractual or property rights of the parties are affected to the detriment of either of the contracting parties are as follows:

Ochoa v. Morales, 230 U.S. 139;

Teigle v. Acme Homestead Ass'n, 297 U.S. 189;

Nord v. Griffin (7th Cir.), 86 Fed. (2d) 481 (certiorari denied, 300 U.S. 673);
Boeing Air Transport Inc. v. Farley, 75 Fed. (2d) 765;
Norwood v. Baker, 172 U.S. 269;
Road Improvement Dist. v. St. Louis etc. R. Co., 28 Fed. (2d) 825.

True, most of the above causes involved a legislative taking of private property for a *public use*, and held it to be without due process of law. However, how much more violative of the Fifth Amendment is it to take such property without notice or hearing *before* the taking *for another's private use, as is the case here?* Here the tenant is by legislative fiat, without notice or hearing, given property of the landlord for the tenant's direct private benefit. If the public derives any interest from such taking, it is an incidental one.

Farbwerke vormals Meister Lucius & Bruning v. Chemical Foundation, Inc., 51 S. Ct. 25, 282 U.S. 819.

V.

THE EMERGENCY PRICE CONTROL ACT IN ITS RENT CONTROL PROVISIONS IS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE AUTHORITY.

Merely a casual reading of the Act of January 30, 1942, C. 26, 56 Stat. 23, will disclose that the Act confers upon the Administrator therein created such broad and sweeping powers as to constitute such Administrator, if such Act is legally permissible, a one-man legislature. The constitutional prohibition

against the abdication by Congress of essential legislative functions, and what are essential elements to state in a legislative act where an administrative agency is given latitude in executing it, is so well set forth in two recent cases as to require no elaboration on this point excepting to apply the decisions of

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter Poultry Corp. v. U. S., 295 U. S. 495.

If the Act of January 30, 1942, C. 26, 56 Stat. 23, is tested by the enunciated principles of those two decisions of the Supreme Court, it will be seen that the Act in question lacks at least three indispensable elements which must be present in order to uphold a statute under the Constitution which is not self-executing, but as condition to vitality in regard to designated persons or things, requires a determination or finding of an executive or administrative officer.

CONCLUSION.

The duty rests upon this Honorable Court to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. (*Smyth v. Ames*, 169 U. S. 466.)

Dated, San Francisco, California,

August 26, 1943.

Respectfully submitted,

C. M. WALTER,

Attorney for Petitioner.

JOHN C. STIRRAT,

Of Counsel.

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(I)



In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 305

STANLEY W. TAYLOR, PETITIONER

v.

PRENTISS M. BROWN, PRICE ADMINISTRATOR OF THE
OFFICE OF PRICE ADMINISTRATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES EMERGENCY COURT OF APPEALS*

MEMORANDUM FOR RESPONDENT

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 121-130) is not yet reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered July 15, 1943 (R. 131). The petition for a writ of certiorari was filed in this Court on August 30, 1943. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, as amended.

QUESTIONS PRESENTED

1. Whether the rent control provisions of the Emergency Price Control Act of 1942 are within the war power of Congress.
2. Whether the rent control provisions of the Act constitute an improper delegation of legislative authority.
3. Whether the rent control provisions of the Act and Maximum Rent Regulation No. 28, as applied to petitioner, violate the Fifth Amendment of the Constitution.
4. Whether the procedural provisions of the Act relating to protests and review in the Emergency Court of Appeals, and the provisions of Procedural Regulation No. 3, violate the due process clause of the Fifth Amendment.
5. Whether the general method of rent control established by Maximum Rent Regulation No. 28 and the eviction provisions contained therein constitute a valid exercise of the powers conferred upon the Administrator by the Act.

STATUTE AND REGULATIONS INVOLVED

The case involves the Emergency Price Control Act of 1942 (Act of January 30, 1942, 56 Stat. 23, 50 U. S. Code Appendix, Supp. II, Sec. 901, 901-924), Maximum Rent Regulation No. 28 (R. 64-85; 7 F. R. 4913), and Procedural Regulation No. 3 (R. 88-108; 7 F. R. 3936).¹

¹ Maximum Rent Regulation No. 28 has been supplanted by the Rent Regulation for Housing effective June 1, 1943, found in 8 F. R. 7322, which does not differ in material

The applicable provisions of the Emergency Price Control Act appear in the Appendix.

STATEMENT

The Emergency Price Control Act of 1942 was enacted on January 30, 1942. On June 30, 1942, the Administrator issued Maximum Rent Regulation No. 28, *supra*, effective July 1, 1942, establishing maximum rents for housing accommodations other than hotels and rooming houses in the San Francisco Bay Defense-Rental Area.

Petitioner, the owner of certain rental property in the said defense-rental area, pursuant to Section 203 of the Act, filed a protest (R. 22-60) against Maximum Rent Regulation No. 28, asserting that the rent control and procedural provisions of the Emergency Price Control Act of 1942 and the provisions of Maximum Rent Regulation No. 28 are unconstitutional. On September 28, 1942, the Price Administrator issued an order denying the protest (R. 61) together with an opinion stating the reasons for such denial (R. 62-63). Thereafter the petitioner filed a complaint with the United States Emergency Court of Appeals, seeking to set aside that order and to have the Act and the Regulation declared unconstitutional (R. 1-16). The Court dismissed the complaint,

respects from the Regulation set out in the Record. Procedural Regulation No. 3 has been supplanted by Revised Procedural No. 3, found in 8 F. R. 526, which does not differ in material respects from the Regulation set out in the Record.

holding that the Act and the Regulation are constitutional (R. 121-130).

DISCUSSION

The decision below presents certain fundamental questions with respect to the constitutionality of the Emergency Price Control Act of 1942 and the validity of the Maximum Rent Regulations issued thereunder. Some of the twenty-five principal and subordinate questions suggested by the petitioner are not properly presented on this record since they were not presented to the Administrator or to the court below; other questions suggested by the petitioner are not sufficiently substantial to warrant review by this Court. The substantial questions which we believe are properly presented on this record have been set forth above.

The decision of the Emergency Court of Appeals is in accord with all decisions of the United States circuit courts of appeals and district courts² except the decisions of the United States District Court for the Middle District of Georgia

² In *Roach v. Johnson*, 48 F. Supp. 833, the District Court of the United States for the Northern District of Indiana held the rent control provisions of the Act invalid on the ground of unconstitutional delegation of legislative power. The decision was set aside by this Court on the ground that the suit was collusive. *United States v. Johnson*, 319 U. S. 302.

in *Brown v. Willingham*,³ *Payne v. Griffin*, *Smith v. Griffin* and *Harden v. Milner Hotels, Inc.*, all decided August 30, 1943; that court held the rent control provisions of the Emergency Price Control Act invalid on the ground of unconstitutional delegation of legislative power. This question, and the other questions properly presented in this case, have not yet been resolved by this Court. We believe that the decision of the court below is clearly correct, but that the questions we have outlined warrant review because of their importance in the administration and enforcement of the Emergency Price Control Act.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

GEORGE J. BURKE,
General Counsel,
Office of Price Administration.

OCTOBER 1943.

³ In *Brown v. Willingham*, appeal to this Court was allowed on September 30, 1943.

Other cases involving the constitutionality of the Emergency Price Control Act are collected in the Government's Memorandum in *Rottenberg v. United States*, No. 375, present Term, pp. 5-7.